WP(C) 4670/1999

BEFORE

HON'BLE JUSTICE MR I. A. ANSARI

By making this application under Article 226 of the Constitution of India, the petitioner has challenged the judgment and order, dated 29.06.99, passed by the Assam Board of Revenue, in Revenue Appeal No. 103 RA (DBR)/98, allowing the appeal and setting aside thereby the order, dated 06.07.98, passed, in Mutation Appeal No. 2/1998, by the Settlement Officer, Dhubri.

2. The material facts, which have given rise to the present writ petition, may, in brief, be set out as follows: The respondents herein applied for granting of mutation of land, covered by Dag No. 116, Khatian No. 174 of Surya Khata Debottar Hat Non-agricultural village, by right of inheritance, their case for mutation being based on two sale deeds. Upon enquiry, which had been made by the staff of the settlement office, and also upon hearing the parties, an order was passed, on 22.12.97, in Mutation Case No. 14(B)/1997-98, by the Assistant Settlement Officer, Dhubri, granting mutation in favour of the applicants-respondents herein. By way of an appeal, the order, dated 22.12.97, aforementioned, was challenged and this appeal gave rise to Mutation Appeal No. 2/1998 aforesaid. By order, dated 06.07.98, the appeal was allowed by the Settlement Officer, Dhubri, and the mutation, granted in favour of the respondents herein, was cancelled. Aggrieved by the order of cancellation of their mutation, the respondents herein preferred an appeal under Section 147 read with Section 151 of the Assam Land and Revenue Regulation, 1886. This appeal gave rise to Revenue Appeal No. 103 RA (DBR)/1998. By judgment and order, dated 29.06.99, passed in the said revenue appeal, the learned Board allowed the appeal and set aside the order, dated 06.07.98, passed by the Settlement Officer, Dhubri. Feeling aggrieved by this judgment and order, dated 29.06.99, the present petitioner, who had been resisting the application for mutation made by the respondents, have, now, come to this Court with the help of the present writ application.

3. I have heard Mr. B. K. Goswami, learned Senior counsel, appearing on behalf of the petitioners, and Mr. B. Benarjee, learned counsel for the respondents.

4. While considering the present writ petition, what needs to be carefully noted is that on the strength of the said two sale deeds, the respondents herein had applied for mutation in respect of the land, which was covered by Dag No. 116 of Khatian No. 174, of Surya Khata Debottar Hat Non-agricultural village. This land stood, in the revenue records, in the name of Abdul Kader Bepari and six others. On the death of Abdul Kader Bepari aforementioned, his legal heirs, by way of registered sale deed No. 6354, dated 02.08.66, sold 4 Lechas of the land, covered by Dag No. 116 of Khatian No. 174, aforementioned, to (i) Sri Naresh Chandra Paul and (ii) Sri Manindra Chandra Paul, both sons of Radha Charan Paul. It was also the case of the applicants that the legal heirs of the deceased Abdul Kader Bepari had also sold, by way of registered sale deed No. 6353, dated 02.08.66, another plot of land, measuring 12 ‰ Lechas, covered by the same Dag and Khatian, to (i) Smt. Renu Bala Paul, W/o Naresh Chandra Paul, (ii) Parul Bala Paul, W/o Manindra Chandra Paul, (iii) Kanu Chandra Paul, S/o Naresh Chandra Paul, and (iv) Manindra Chandra Paul, S/o Radha Charan Paul.

5. Based on the above application seeking mutation, an enquiry was made by the settlement staff and the report submitted, in the case, reflected that Khatian No. 174 aforementioned did not contain Dag No. 116; rather, the said Khatian had only one Dag number and this Dag No. was 313. This report also disclosed that the land, which had been in the possession of the applicants, was actually covered by Dag No. 313 of Khatian No. 174. Even the boundaries, shown in the sale deeds, according to this report, indicated that the land, in the possession of the applicants, was covered by Dag No. 313 of Khatian No. 174. Having noticed as to what the said report had indicated, the Assistant Settlement Officer, in his order, dated 22.12.97, aforementioned, observed, concluded and directed as under:

\1st party is present. 2nd party is also present. Notices have been served. The 2nd party has not filed any objection. The Mandal and Kanungo have submitted

reports.
The reports is perused. As per the report, the land in question measuring 1 Big ha, 2 Kathas, 5 Lechas covered by Khatian No. 174, Dag No. 313 situated at Surya Khata Debottar Hat Non-agricultural village, stands in the names of Abdul Kader Bepari, S/o Askar Ali and six others. On the death of pattadar No. 1 Abdul Kad er Bepari his legal heirs 1) Khasru Bepari, 2) mahabbat Bepari and 3) Manu Bepar i all sons of Late Abdul Kader Bepari sold 4 lechas of land covered by Dag No. 1 16, Khatian No. 174 situated at Surya Khata Debottar Hat Non-agricultural villag e by registered sale deed No. 6354 dated 02.08.66, to Sri Naresh Chandra Paul, b oth sons of Radha Charan Paul and another 12 and ‰ lechas of land under the Khat ian were sold by the legal heirs of deceased pattadar No. 1 namely 1) Khasru Bep ari, 2) Mahabbat Bepari, 3) Manu Bepari, all sons of Abdul Kader Bepari, by regi stered sale Deed No. 6353 dated 02.08.66, to 1) Smti Renu Bala paul, W/o Naresh Chandra Paul, 2) Parul Bala Paul, W/o Manindra Chandra Paul, 3) Kanu Chandra Pau l, S/o Naresh Chandra Paul, 4) Manindra Chandra Paul, S/o Radha Charan Paul.
As per the report of the Kanungo and on perusal of the records, it is seen that the Sub Deputy Collector, Bilashipara, has granted mutation in the names of the purchasers by an order, passed on 03.12.68, in Case No. 77(B)/68-69 of 12 & ‰ l echas of land which is a part of Dag No. 313, Khatian No. 174 of Surya Khata Deb ottar Hat Non agricultural village under Section 20 of the Goalpara Tenancy Act. Therefore, this office does not consider it necessary to pass a fresh order fo r mutation in respect of 12 & ‰ lechas of land and the order dated 03.12.68 is a ffirmed. And 1) Sri Jiban Krishna Paul, 2) Adhir Chandra Paul, 3) Kanu paul, al l sons of Late Naresh Chandra Paul and 4) Smti Parul Bala Paul, W/o Late Manaind ra paul have applied for mutation as the legal heirs of the purchasers of the re maining 4 lechas of land under the aforesaid Khatian which has been purchased by Registered deed No. 6354 dated 02.08.66 and which is under their possession and enjoyment. From the report of the Mandal and kanungo, it is seen that in the o ld Khatian No. 174, Dag No. 116 does not exist, only Dag No. 313 is there. On t he other hand, the boundaries shown in the deed indicate that the applicants hav e possession over Dag No. 313. Since, as per the report the Mandal and Kanungo the boundaries of the land tally with the land under possession and since the Su b-Deputy Collector of Bilashipara Circle has granted mutation in respect of Dag No. 313 instead of Dag No. 116 by his order, dated 03.12.68, the land in questio n can be mutated in the names of the applicants.
Accordingly, land measuring 4 lechas covered by old Khatian No. 174, old Dag No. 313 (new Dag No. 286) situated at Surya Khata Debottar Hat Non-agricultural vil lage is mutted in the names of 1) Sri Jiban Krishna Paul, 2) Adhir Chandra Paul, 3) Kanu Chandra Paul and 4) Smti Parul Bala Paul, W/o Manindra Chandra Paul, al ong with other pattadars.
Accordingly, Mandal/Kanungo will correct the records.\

6. From the observations made above, it is clear that the mutation was gran ted, in favour of the applicant, on the ground that the petitioner have had rais ed no objection to the prayer for mutation. This apart, the report of the Kanun go revealed that the boundaries of the land tallied with the land, which was fou nd in the possession of the applicants-respondents herein, and that this land wa s covered by Dag No. 313 of Khatian No. 174. If what had been reported by the staff of the Settlement Office and what had been observed by the Assista nt Settlement Officer were true, there was no impediment, in law, on the part of the Assistant Settlement Officer, to grant mutation in favour of the applicants , as had been sought for by them. However, the Settlement Officer, Dhubri, by h is order, on 06.07.98, interfered with the mutation, so granted, merely on the g round that the Assistant Settlement Officer had granted mutation in respect of D ag No. 313 of Khatian No. 174, though the application for mutation was in respec t of Dag No. 116. It was further observed by the Settlement Officer, in his ord er, dated 06.07.98, aforementioned that the records show that the purchaser had no right and possession over the Dag No. 313.
7. What is, however, of immense importance to note, now, is that the Settle

ment Officer's observation that the purchaser had no right and possession over t he land of Dag No. 313, Khatian No. 174, was not based on any material on recor d. The mutation, granted by the Assistant Settlement Officer, was reversed merel y on the ground that the application for mutation was in respect of the land und er Dag No. 116 and not 313.

8. The Assistant Settlement Officer, I notice, had assigned cogent reasons for granting mutation. At the time of hearing of this writ petition, nothing co uld be submitted, on behalf of the petitioners, to show that the land, which has been in the possession of the respondents, was not covered by Dag No. 313 of Kh atian No. 174. In these circumstances, the mutation, granted in favour of the r espondents herein, could not have been interfered with. It is precisely for thi s reason that the learned Board of Revenue has interfered with the order, dated 06.07.98, passed by the Settlement Officer. For the purpose of taking the view that the present one is a case of mis-description, the learned Board of Revenue has placed reliance on the decision of the Apex Court, in Sheodhyan Singh and ot hers Vs. Mst. Sanichara Kuer and others (AIR 1963 SC 1879).

9. Though it has been contended by Mr. Goswami that to the facts of the cas e at hand, the principles, laid down in Sheodhyan Singh and others (supra), are not applicable, what needs to be carefully noted is that in Sheodhyan Singh and others (supra), the Apex Court has clarified that when the identity of the prope rty sold is well established, the mere mis-statement, in mentioning the property , is nothing but mis-description of the property, which, otherwise, could have b een identified.

10. What logically follows from above discussion is that when a property can be identified otherwise than by its Dag number and/or Khatian number, there is no impediment in granting mutation. In fact, prayer for mutation cannot, in suc h a case, be declined merely because the Dag number and/or Khatian number mentio ned, in the application for mutation or sale deed, is not correct. The error in mentioning the Dag number or Khatian number, in such a case, will merely be a case of mis-description of property and nothing more. In the case at hand too, n otwithstanding the fact that the application for mutation had been made in respe ct of Dag No. 116, the fact, however, remains that the mutation, sought for, was in respect of Khatian 174 and, the enquiry, conducted by the settlement staff, revealed that the land, which the respondents herein had been in possession of, on the strength of the said two deeds, was really covered by Dag No. 313 of Kha tian No. 174. It is not the case of the writ petitioner that the land, which t he respondents had actually purchased and had been in possession of, is not cove red by Dag No. 313. In the face of these well established facts, the land, in r espect whereof mutation had been sought for, stood clearly identified and since the land, so identified, fell within Dag No. 313 of Khatian No. 174, the mutati on, granted in favour of the respondents herein, could not have been legally int erfered with by the Settlement Officer and the learned Board of Revenue acted wi thin the ambit of its powers in setting aside the order, dated 06.0798, aforemen tioned. Viewed thus, it is clear that the impugned judgment and order, dated 29 .06.99, aforementioned suffers from no infirmity, legal or factual.

10. In the result and for the reasons discussed above, this writ petition fa ils and the same shall accordingly stand dismissed.

11. No order as to cost.

12. Send back the LCR.